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MINISTRY OF LAW

New Delhi, the 1st November, 1955

THE INSURANCE (AMENDMENT) ORDINANCE, 1955

No. 6 OF 1955

Promulgated by the President in the Sixth Year of the
Republic of India

An Ordinance further to amend the Insurance Act, 1938.

WHEREAS Parliament is not in session, and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Insurance (Amendment) Ordinance, 1955.

Short title
and com-
mencement.

(2) It shall come into force at once.

IV of 1938. 2. In the Insurance Act, 1938 (hereinafter referred to as the principal Act), after section 52B, the following section shall be inserted, namely:—

Insertion of
new section
52BB.

“52BB. (1) If the Administrator is satisfied that any person has rendered himself liable to be proceeded against under section 106, he may, pending the institution of proceedings against such person under that section, by order in writing, prohibit him or any other person from transferring or otherwise disposing of any property which, in the opinion of the Administrator, would be liable to attachment in proceedings under that section.

Powers of
Administra-
tor respect-
ing property
liable to at-
tachment
under section
106.

(2) Any person aggrieved by an order made by the Administrator under sub-section (1) may, within fourteen days from the date on which the order is served on him, appeal against such order to the Central Government, and the Central Government may pass such order thereon as it thinks fit.

(3) An order made by the Administrator under sub-section (1) shall, subject to any order made by the Central Government on appeal, be in force for a period of three months from the date of the order unless, before the expiry of the said period, an application is made under sub-section (1) of section 106 to the court competent to exercise jurisdiction under that sub-section, and when such an application is made, the order shall, subject to any order made by that court, continue in force as if it were an order of attachment made by that court in proceedings under that section.

(4) An order made by the Administrator under this section shall,—

(a) in the case of an order affecting a corporation or firm, be served in the manner provided for the service of summons in rule 2 of Order XXIX or rule 3 of Order XXX, as the case may be, in the First Schedule to the Code of Civil Procedure, 1908, and

VII of 1908.

(b) in the case of an order affecting a person not being a corporation or firm, be served on such person—

(i) personally, by delivering or tendering to him the order, or

(ii) by post, or

(iii) where the person cannot be found, by leaving a copy of the order with some adult male member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain, and every such order shall also be published in the Official Gazette.

(5) If any question arises whether a person was duly served with an order under sub-section (4), the publication of the order in the Official Gazette shall be conclusive proof that the order was so served, and a failure to comply with the provisions of clause (a) or clause (b) of sub-section (4) shall not affect the validity of the order.

(6) Notwithstanding anything contained in this section, any property in respect of which an order has been made by the Administrator may, with the previous permission of the Administrator and subject to such terms and conditions as he may impose, be transferred or otherwise disposed of.

(7) Notwithstanding anything contained in any other law for the time being in force, the transfer or other disposition of any property in contravention of any order made by the Administrator under this section or of any terms and conditions imposed by him shall be void.

(8) For the purpose of enabling him to form an opinion as to whether any property would be liable to attachment in proceedings under section 106 or for the purpose of enabling him to institute proceedings under that section, the Administrator may require any person to furnish information on such points or matters as in the opinion of the Administrator may be relevant for the purpose, and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 of the Indian Penal Code.

(9) The Administrator shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) requiring the production of documents; and

(c) receiving evidence on affidavits;

and any proceeding before the Administrator under this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

(10) Save as provided in this section or in section 106, and notwithstanding anything contained in any other law for the time being in force,—

(a) no suit or other legal proceeding shall lie in any court to set aside or modify any order of the Administrator or the Central Government made under this section, and

(b) no court shall pass any decree, grant any injunction or make any other order which shall have the effect of nulifying or affecting in any way any such order.”

3. In section 52G of the principal Act, in sub-section (1), for the words and figures “sections 52A to 52C inclusive”, the following shall be substituted, namely:—

“section 52A, section 52B, section 52BB or section 52C”.

XLV of
1860.

V of 1908.

XLV of
1860.

Amendment
of section
52G.

Substitution
of new sec-
tion for sec-
tion 106.

4. For section 106 of the principal Act, the following section shall be, and shall be deemed always to have been, substituted, namely:—

Power of
court to order
restoration of
property of
insurer or
compensa-
tion in
certain cases.

“106. (1) If, on the application of the Controller or an Administrator appointed under section 52A or an insurer or any policy-holder or any member of an insurance company or the liquidator of an insurance company (in the event of the insurance company being in liquidation), the court is satisfied—

(a) that any insurer (including in any case where the insurer is an insurance company any person who has taken part in the promotion or formation of the insurance company or any past or present director, managing agent, manager, secretary or liquidator) or any officer, employee or agent of the insurer,—

(i) has misapplied or retained or become liable or become accountable for any money or property of the insurer; or

(ii) has been guilty of any misfeasance or breach of trust in relation to the insurer; or

(b) that any person, whether he is or has been in any way connected with the affairs of the insurer or not, is in wrongful possession of any money or property of the insurer or having any such money or property in his possession wrongfully withholds it or has converted it to any use other than that of the insurer; or

(c) that, by reason of any contravention of the provisions of this Act, the amount of the controlled fund within the meaning of section 27A has been diminished;

the court may examine any such insurer, director, managing agent, manager or liquidator or any such officer, employee or agent of the insurer or such other person, as the case may be, and may compel him to contribute such sums to the assets of the insurer by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks fit, or to pay such sum as may be found due from him in respect of any money or property of the insurer for which he is liable or accountable or to restore any money or property of the insurer or any part thereof, as the case may be; and where the amount of the controlled fund has been diminished by reason of any

contravention of the provisions of this Act, the court shall have power to assess the sum by which the amount of the fund has been diminished and to order the person guilty of such contravention to contribute to the fund the whole or any part of that sum by way of compensation; and in any of the aforesaid cases the court shall have power to order interest to be paid at such rate and from such time as the court may deem fit.

(2) Without prejudice to the provisions contained in sub-section (1) or sub-section (3), where it is proved that any money or property of an insurer has disappeared or has been lost, the court shall presume that every person in charge of, or having a disposing power over, such money or property at the relevant time (whether a director, manager, principal officer or any other officer) has become accountable for such money or property within the meaning of sub-clause (i) of clause (a) of sub-section (1), and the provisions of that sub-section shall apply accordingly, unless such person proves that the money or property has been utilised or disposed of in the ordinary course of the business of the insurer and for the purpose of that business or that he took all reasonable steps to prevent the disappearance or loss of such money or property or otherwise satisfactorily accounts for such disappearance or loss.

(3) Where the insurer is an insurance company and any of the acts referred to in clauses (a), (b) and (c) of sub-section (1) has been committed by any person, every person who was at the relevant time a director, managing agent, manager, liquidator, secretary or other officer of the insurance company shall, for the purposes of that sub-section, be deemed to be liable for that act in the same manner and to the same extent as the person who has committed the act, unless he proves that the act was committed without his consent or connivance and was not facilitated by any neglect or omission on his part.

(4) Where at any stage of the proceedings against any person under this section (hereinafter referred to as the delinquent), the court is satisfied by affidavit or otherwise—

(a) that a *prima facie* case has been made out against the delinquent; and

(b) that it is just and proper so to do in the interests of the policy-holders of an insurer or of the members of an insurance company,

the court may direct the attachment of—

(i) any property of the insurer in the possession of the delinquent,

(ii) any property of the delinquent which belongs to him or is deemed to belong to him within the meaning of sub-section (5);

(iii) any property transferred by the delinquent within two years before the commencement of proceedings under sub-section (1) or during the pendency of such proceedings, if the court is satisfied by affidavit or otherwise that the transfer was otherwise than in good faith and for consideration.

(5) For the purposes of sub-section (4), the following classes of property shall be deemed to belong to a delinquent,—

(a) any property standing in the name of any person which by reason of the person being connected with the delinquent, whether by way of relationship or otherwise, or on account of any other relevant circumstances appears to belong to the delinquent;

(b) the property of a private company in respect of the affairs of which the delinquent, by himself or through his nominees, relatives, partners or persons interested in any shares of the company, is able to exercise or is entitled to acquire control, whether direct or indirect.

Explanation.—For the purposes of this section a person shall be deemed to be a nominee of a delinquent, if, whether directly or indirectly, he possesses on behalf of the delinquent, or may be required to exercise on the direction or on behalf of the delinquent, any right or power which is of such a nature as to enable the delinquent to exercise or to entitle the delinquent to acquire control over the company's affairs.

(6) Any claim to any property attached under this section or any objection to such attachment shall be made by an application to the court, and it shall be for the claimant or objector to adduce evidence to show that the property is not liable to attachment under this section, and the court shall proceed to investigate the claim or objection in a summary manner.

(7) When disposing of an application under sub-section (1), the court shall, after giving all persons who appear to it to be interested in any property attached under this section an opportunity of being heard, make such order as it thinks fit respecting the disposal of any such property for the purpose of effectually enforcing any liability under this section, and all such persons shall be deemed to be parties to the proceedings under this section.

(8) In any proceedings under this section the court shall have full power and exclusive jurisdiction to decide all questions of any nature whatsoever arising thereunder and, in particular, with respect to any property attached under this section, and no other court shall have jurisdiction to decide any such question in any suit or other legal proceeding.

(9) In making any order with respect to the disposal of the property of any private company referred to in clause (b) of sub-section (5), the court shall have due regard to the interests of all persons interested in such property other than the delinquent and persons referred to in that clause.

(10) This section shall apply notwithstanding that the act is one for which the person concerned may be criminally liable.

(11) In proceedings under this section the court shall have all the powers which a court has under section 237 of the Indian Companies Act, 1913.

(12) This section shall apply in respect of a co-operative society as defined in Part III as it applies in respect of an insurer.

(13) On and from the commencement of the Insurance (Amendment) Ordinance, 1955, the court entitled to exercise jurisdiction under this section shall be the High Court within whose jurisdiction the registered office of the insurer is situate (hereinafter referred to as the High Court) and any proceedings under this section pending at such commencement in any court other than the High Court shall, on such commencement, stand transferred to the High Court.

(14) The High Court may make rules providing for—

(a) the manner in which enquiries and proceedings may be held under this section;

(b) any other matter for which provision has to be made for enabling the High Court to effectively exercise its jurisdiction under this section.”.

Amendment
of section
107.

5. In section 107 of the principal Act, in sub-section (1),—

(a) after the words “the Controller”, the words and figures “or an Administrator appointed under section 52A” shall be inserted;

(b) for the words, brackets and figures “any director, manager or other officer of an insurer or any person who is liable under sub-section (2) of section 41”, the words, brackets and figures “any director, managing agent, manager, secretary or other officer of an insurer or any liquidator or any employee or agent of an insurer or any person who is liable under sub-section (2) of section 41 or any other person” shall be substituted.

RAJENDRA PRASAD,
President.

K. Y. BHANDARKAR,
Secy. to the Govt. of India.